

REMARKS

This application is a National Phase application of PCT application no. PCT/AU2005/000020, and was filed with the PTO on July 18, 2006. The specification and claims were amended during the preliminary examination period in accordance with Article 34 of the PCT. For the Examiner's convenience, the claims as amended under Article 34 during the preliminary examination period are presented above. No amendments are made.

Our original Transmittal letter concerning this Section 271 submission specifically stated that: "The application was amended under Article 34 on June 17, 2005 and applicant wishes to proceed with these amendments." (See box 20 of Transmittal letter.) Such a submission is in compliance with 37 CFR § 1.485 and MPEP § 1471 and 1893.01(a)(3). Specifically:

Amendments to the international application that were properly made under PCT Article 34 during the international preliminary examination phase (i.e., Chapter II) will be annexed by the International Preliminary Examining Authority to the international preliminary examination report (IPER) and communicated to the elected Offices. See PCT Article 36, PCT Rule 70.16, and MPEP § 1893.03(c). If these annexes are in English, they will normally be entered into the U.S. national stage application by the Office absent a clear instruction by the applicant that the annexes are not to be entered. However, if entry of the replacement sheets will result in an obvious inconsistency in the description, claims or drawings of the international application, then the annexes will not be entered...

The fact that an amendment made to the international application during the international phase was entered in the national stage application does not necessarily mean that the amendment is proper. Specifically, amendments are not permitted to introduce "new matter" into the application. See PCT Article 34(2)(b).¹

The IPER (which is in PAIR) includes the amended claims. Moreover, the IPER includes an amendment to the specification. We respectfully ask that these amendments be entered into the present application, having been properly made when the application was filed.

The Office Action mailed October 29, 2008 listed rejections for claims without the amendments specified in the IPER. Specifically, the rejections under 35 U.S.C. § 102(b) of the claims over U.S. Patent No. 6,331,059 ("Kudryashov"), WO 02/35995 ("Ross"), and WO

¹ MPEP § 1893.01(a)(3)

98/27863 ("Williams") are based upon the pre-amendment claims. As these rejections relate to claims for which examination was not requested, we respectfully ask that the rejections be vacated.

Notwithstanding this request, we note that the IPER found all claims amended under Article 34 to be Novel and possessing Inventive Steps over the cited references, Kudryashov. Specifically, the IPER states:

DI: US 6 331 059

D2: PRIMOT et al. Deconvolution from wave-front sensing: a new technique for compensating turbulence degraded images.

Novelty (N) Inventive Step (IS)

DI discloses an apparatus and method for compensating for the effect of aberrations in an optical system on an acquired image, and explicitly incorporates D2 as including the details of the calculations. The method of D2 includes simultaneously acquiring two images - one of a beam of light that is directed through the system and measured on a Shack-Hartmann wavefront sensing module, and the other a retinal image taken by a high resolution CCD detector. These documents are therefore limited to the use of a Shack-Hartmann wavefront sensor, and *neither document discloses or suggests solving the transport of intensity equations to obtain phase data relating to the wavefront.* Claims 1-17 therefore satisfy the criteria for novelty and inventive step.²

In view of the above, we ask that the application be allowed.

Filed herewith is a Petition for 1-Month Extension of Time. Please apply any other charges or credits to deposit account 06-1050, referencing 20498-0003US1.

² IPER, Box No. V, emphasis added

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Respectfully submitted,

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